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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,552	11/25/2003	Jean-Louis Gueret	NONY 3.0-015	5845
530	7590	09/27/2007	EXAMINER	
LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			MANAHAN, TODD E	
			ART UNIT	PAPER NUMBER
			3732	
			MAIL DATE	DELIVERY MODE
			09/27/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/721,552	GUERET, JEAN-LOUIS	
	Examiner	Art Unit	
	Todd E. Manahan	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 12 July 2007.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-32 and 34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-32 and 34 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application
- 6) Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-32 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anakama (Japanese Patent No. 55-136409) in view of Gueret (United States Patent No. 5,918,994).

Anakama discloses a device comprising a rod 2 having a brush 3 affixed to one end with a core and bristle carrying portion. The bristle carrying portion forms an angle of greater than zero degrees relative to the longitudinal axis of the rod. The device further includes a receptacle adapted to receive the rod and brush. As noted in the claims the brush is "slightly tilted" and thus only encompassing a small angle will not touch the inner wall of the receptacle when in the assembled condition. Anakama discloses the claimed invention except for the brush comprising a twisted wire core and the specific angle the bristle carrying portion makes relative to the longitudinal axis of the rod. Gueret discloses that it is old and well known in the art to make mascara brushes with a twisted wire core. Gueret further discloses various mascara brushes having non-circular cross sections; longitudinal ribs; plane surfaces; concave surfaces; constant cross sections; varying cross sections; and cross sections that vary in size, but not shape. Because both Anakama and Gueret disclose application brushes , it would have been obvious to one skilled in the art to substitute the twisted wire core brush of Gueret for the brush of Anakama in

order to achieve the predictable result of manufacturing an applicator brush (*KSR International v. Teleflex Inc.*, 82 USPQ2d 1385 (2007)). It would have been further obvious to one having ordinary skill in the art at the time the invention was made to have the bristle carrying portion make an angle of less than 20 degrees relative to the longitudinal axis of the rod, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. Regarding claims 2-4, 12-15, 19-28, it would have been obvious to one skilled in the art to form the brush of Anakama with the bristles forming an envelope having non-circular cross sections; longitudinal ribs; plane surfaces; concave surfaces; constant cross sections; varying cross sections; and cross sections that vary in size, but not shape in view of Gueret in order to obtain a make-up which is full-bodied, regular, elongated and curls. Regarding claims 16-18, it would have been obvious to one of ordinary skill to make the core of twisted wire having either a right or left hand pitch, as it is old and well known in the art to make mascara brushes with a twisted wire core having either a right or left hand pitch.

Response to Arguments

Applicant's arguments with respect to claims 1-32 and 34 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Todd E. Manahan whose telephone number is 571 272- 4713. The examiner can normally be reached on Mon-Fri.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Rodriguez can be reached on 571 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Todd E Manahan
Primary Examiner
Art Unit 3732



T.E. Manahan
24 September 2007